

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.15704 of 2007

Dated: 22.10.2007

Between:

Satuluri Subba Rao, S/o.Subbaiah.

...Petitioner

and

Authorised Officer,
State Bank of Hyderabad,
Regional Office,
Patamatalanka,
Vijayawada, and others.

...Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.15704 of 2007

ORDER:

This court ordered notice before admission on 24.07.2007.
Counter affidavit had been filed.

Heard Sri K.Jayakumar, learned Counsel representing the writ petitioner and Sri Addepalli Suryanarayana, learned Counsel representing the contesting respondents.

The Writ Petition is filed for a writ of mandamus declaring the action of the first respondent in issuing auction notice under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act, for brevity), dated 14.06.2007, without adjusting the amount realized from the sale of movable properties worth Rs.5,50,000/- in I.A.No.6 of 1996 in O.S.No.3 of 1996 on the file of the Principal Senior Civil Judge, Guntur, towards the secured amount as arbitrary, illegal and unsustainable, and for a

consequential direction to the first respondent to refrain from initiating any further action under Section 13 of the Act against the petitioner.

It is stated by the writ petitioner in the affidavit filed in support of the writ petition that the third respondent, who is represented by its Managing Partner, had applied to the second respondent for sanction of credit facilities in the year 1995 for a sum of Rs.6,50,000/- and the same was sanctioned against the mortgage of immovable properties worth of "B" schedule properties is Rs.5,50,000/- and against the mortgage of "A" schedule properties the immovable property of the petitioner. The third respondent availed the loan and as he failed to repay the loan amount, the second respondent filed O.S.No.3 of 1996 on the file of the Principal Senior Civil Judge, Guntur, for recovery of a sum of Rs.7,50,828-21 and also filed I.A.No.6 of 1996 in O.S.No.3 of 1996 to appoint a Commissioner to sell the movables attached from the premises of the plaint "B" schedule properties belonging to the third respondent which is worth of Rs.5,50,000/-. It is also submitted that the petitioner being an aged person, the third respondent was looking after the court case on behalf of the petitioner also. The petitioner had also filed counter in the said suit and the same was being contested. During the pendency of the suit proceedings, the third respondent had obtained signatures on vakalat papers and given assurance that he will look after the court case and nothing will happen to the petitioner's immovable property.

It is also stated that the petitioner was shocked to receive the notice of auction issued by the first respondent dated 14.06.2007 stating that the property is going to be auctioned on 30.07.2007 at 3.00 pm in the State Bank of Hyderabad, Piduguralla Branch, and the amount of secured debt excluding interest from 17.01.1996 is Rs.7,78,101-21. After enquiry, the petitioner came to know that the

second respondent had issued notice under Section 13(2) of the Act, and the possession notice dated 14.01.2007, was also published and possession of the immovable property was taken on 15.01.2005. In fact the petitioner was in possession and enjoyment of the property since its purchase and possession was not given to any person.

It is further stated that the petitioner has applied for the certified copy of the proceedings in O.S.No.3 of 1996 on the file of the Principal Senior Civil Judge, Guntur, and the same was decreed *ex parte* on 08.12.2005 granting preliminary decree with costs for Rs.7,50,838-21 with subsequent interest at 6% per annum on Rs.6,50,000/- from the date of the suit and till the realization and granted 3 months time for redemption. It is submitted that though the petitioner filed written statement and the second respondent has seized the movables of Rs.5,50,000/- and the same was not brought to the notice of the court by the third respondent. I.A.No.6 of 1996 in O.S.No.3 of 1996 on the file of the Principal Senior Civil Judge, Guntur, was dismissed, as the suit is decreed. It was also learnt that the third respondent filed W.P.No.8506 of 2003 questioning the notice issued under Section 13(2) of the Act and the result of the writ petition was not known to the petitioner. Thus, the action of the first and second respondents in giving auction notice dated 14.06.2007 had been challenged on several grounds.

It is stated that the rules governing the field had not been followed, and further stated that the competent civil court granted interest @ 6% per annum only. Further, specific stand had been taken that the borrowers virtually were left remediless when such proceedings are initiated and certain grounds like good faith, and that the petitioner is only a guarantor to the loan transaction also had been raised.

In the counter affidavit filed by respondents 1 and 2, it is stated that the writ petitioner had suppressed that he was one of the writ petitioner in W.P.No.8506 of 2003 filed challenging the notice dated 10.04.2003 earlier issued under Section 13 of the Act. It is also stated by the petitioner that the said writ petition was filed by the third respondent. In fact, the said writ petition was filed by the writ petitioner, the third respondent and other partners of the firm challenging the notice of auction issued under the Act. This Court dismissed the said writ petition following the judgment of the Supreme Court in **MARDIA CHEMICALS LTD. v. UNION OF INDIA** (Transfer case (Civil) No.92-95 of 2002, dated 8th April, 2004), upholding the provisions of the Act. The petitioner has not filed any appeal before the Debt Recovery Tribunal. In view of the judgment of the Apex Court and the judgment in W.P.No.8506 of 2003, the present writ petition filed challenging auction notice is misconceived and liable to be dismissed.

It is also stated that at the request of the third respondent firm and its partners, the Bank has sanctioned a cash credit limit of Rs.6.50 lakhs on 20.03.1995. The petitioner stood as guarantor and as security for due repayment of the loan together with interest he has created equitable mortgage of this immovable properties by depositing title documents. As the firm and its partners did not adhere to the terms of sanction in repayment, the account became NPA on 30.09.1995. The Bank has filed O.S.No.3 of 1996 on the file of the Principal Senior Civil Judge, Guntur, against the Firm, the petitioner and partners for recovery of Rs.7,50,838.21 ps with future interest. The movable properties were shown in schedule "A" and the Bank filed I.A.No.6 of 1996 for appointment of advocate commissioner to auction the movable property hypothecated to Bank. At that juncture one

Sri Veluguri Vijayakumar filed O.S.No.353 of 1995 on the file of Principal Senior Civil Judge, Guntur against Sri S.Yeleswara Rao the Managing Partner of the third respondent firm and obtained attachment of the movables of the third respondent lying in the shop in I.A.No.2263 of 1995. Having come to know of the order of attachment, the Bank filed I.A.No.2263 of 1995 in O.S.No.353 of 1995 to raise attachment. The Court appointed Advocate Commissioner to auction the movables. Against the said order, Sri S.Yelleswara Rao filed revision and the Court permitted to sell the medicines. The Commissioner auctioned the medicines and credited an amount of Rs.7.500/- into Court in O.S.No.353 of 1995. The suit filed by Bank, O.S.No.3 of 1996, was decreed on 08.12.2005. Insofar as the immovable properties mortgaged by the petitioner are concerned, the Bank initiated proceedings under the Act.

It is also averred in paragraph 5 of the counter affidavit that the contention of the petitioner that the value of movables attached is Rs.5,50,000/- is false and incorrect. In fact as far as movables are concerned they were attached in O.S.No.353 of 1995 filed by Sri V.Vijay Kumar a private person and except sale of medicines, sale of other movables are stayed by this Court in the revision filed by S.Yelleswara Rao, the Managing Partner of third respondent. The Bank did not attach or took possession of the movables. The Bank has not realized any amount from the movables. The Bank issued demand notices under Section 13 of the Act followed by notice of possession and auction notice. Possession of immovable were also taken as per notice of possession. The petitioner and other defendants conveniently remained *ex parte* in O.S.No.3 of 1996 and the Court had no option except to pass *ex parte* decree. The decree passed is still in force. The Bank is not concerned if the petitioner

signed blank papers and given to third respondent reposing confidence in him to contest the suit and if he has acted otherwise. Further, as stated supra the movables are directed to be auctioned in O.S.No.353 of 1995 filed by the third party and not in the suit filed by the Bank. The petitioner being one of the writ petitioner is well aware of the dismissal of Writ Petition No.8506 of 2003 and if he is not aware of the result there was no need to file the present writ petition. The liability of the petitioner as guarantor is co-extensive and it is a joint and several liability. The Bank has got extra remedy under the provisions of the Act in addition to civil action. All the grounds mentioned are grounds not tenable to be agitated before this Court under Article 226 of the Constitution of India in view of the judgment of apex Court in **M/s.MARDIA CHEMICALS** case (supra). In such circumstances, the dismissal of the Writ Petition had been prayed for.

The order in W.P.No.8506 of 2003, dated 23.06.2003, was placed before this Court wherein the writ petitioner herein was shown as the fourth writ petitioner. In the light of the respective stand taken by the parties, when a writ petition filed by the present writ petitioner along with certain other petitioners, W.P.No.8506 of 2003, was dismissed by the Division Bench, and when the selfsame grounds had been raised in the prior writ petition also, this Court is of the considered opinion that this writ petitioner who was the fourth writ petitioner in the prior writ petition cannot be permitted to reagitate the selfsame question. Apart from this aspect of the matter, even on merits there is no illegality or any legal infirmity as such so as to interfere under Article 226 of the Constitution of India.

In the light of the above, the Writ Petition, being devoid of merits, shall stand dismissed. There shall be no order as to costs.

22.10.2007
vs

(P.S.NARAYANA, J)